IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 928 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JADEJA BAPALAL RANUBHA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PRAVIN GONDALIYA for Applicant
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/07/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – original accused has prayed for an appropriate Writ, order and

direction quashing and setting aside the order passed by the learned Additional Sessions Court at Gondal below Exh. 265 dated 12.04.2007 in Sessions Case No. 36 of 2004 and permit the petitioner to recall the witnesses as prayed in application at Exh. 265.

2. The petitioner is original accused of Sessions Case No. 36 of 2004. At the time of trial the petitioner – original accused submitted an application below Exh. 265 to recall certain witnesses for further cross-examination whose names have been mentioned in the application contending inter-alia that when all those persons came to be examined earlier, certificates / case papers with regard to medical treatment was not available and the same are available after Dr. Vasavda came to be examined. He produced medical papers i.e. Outdoor and Indoor case papers at Exhs. 241 and 242 and therefore, it is necessity to further cross-examine witnesses and other injured persons. Said application came to be dismissed by the learned trial Court by impugned order by holding that the relevant medical papers and injury certificates were already there at the time when witnesses who are sought to be recalled

were cross-examined and in fact certain questions were asked during cross-examination and that application of the petitioner to recall those witnesses for the purpose of further examination is only with a view to delay trial, therefore, the learned trial Court rejected the said application. Being aggrieved and dissatisfied with the same, the petitioner – original accused has preferred the present petition. Though styled as petition under Article 226 of the Constitution of India, however, the same is under Article 227 of the Constitution of India.

3. Mr.Gondaliya, learned Advocate appearing on behalf of the original accused has submitted that the learned trial Court committed an error in not allowing the application of the petitioner – original accused to recall the witnesses for the purpose of further cross-examination as the same was required in view of the examination of witness i.e. Doctor who has produced relevant medical certificates i.e. Indoor and Outdoor case papers. He has relied upon decision of the Hon'ble Supreme Court in the case of ***Riyazuddin and Ors. V/s. State of U.P.*** reported in

2001 Cri.L.J. 3907 in support of his submission to allow the application to recall the witnesses. He has also further submitted that as held by the Hon'ble Supreme Court in the case of ***Mohanlal Shamji Soni V/s. Union of India*** reported in *AIR 1991 SC 1346*, power to summon any person as witness or to recall and re-examine can be exercised at any stage of proceedings. Therefore, it is requested to allow the present application.

4. Mr.Mengdey, learned Additional Public Prosecutor has opposed the application and submitted that in the facts and circumstances of the case and for the reasons stated in the application the learned trial Court has not committed any error in rejecting the application submitted by the petitioner to recall the witnesses for further cross-examination as it is specifically observed by the learned trial Court that application is filed with a view to delay further proceedings and that earlier witnesses who are sought to be recalled were throughly cross-examined on the question for which permission to recall is sought, and even at earlier stage also when the witnesses who are sought to be recalled at that time medical papers

were already there and on that point also they were examined. Therefore, it cannot be said that the learned trial Court has committed any error in rejecting the said application. Therefore, it is requested to dismiss the present application.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is no doubt true that power to summon any person as witness or to recall and re-examine can be exercised at any stage of proceedings, however, the same is not absolute right and the said power is to be exercised if the same is essential for just decision of the case and for which earlier opportunity was not given. In the present case the ground which is mentioned for recalling the witnesses for further cross-examination is that in view of subsequent recording of witnesses of two Doctors on production of medical papers i.e. Indoor and Outdoor papers, further questions are required to be asked, therefore, witnesses / injured persons are required to be recalled for the purpose of further cross-examination. Learned trial Court on considering the

earlier evidence of the witnesses sought to be recalled has specifically held and observed that at the relevant time all those witnesses were examined and cross-examined; medical certificates were already there and they were also cross-examined on that point. Learned trial Court has also observed that the application in question is nothing but to delay the criminal trial. It is also required to be noted that the trial began in the year 2004 and the prosecution examined witness No.1 in the year 2004 and thereafter, many witnesses have been cross-examined. It is also specifically held by the learned trial Court that considering the cross-examination of the witnesses who are sought to be recalled they were fully cross-examined in detail and as the prosecution Advocate is changed, it cannot be the ground to recall the witness. Considering the facts and circumstances of the case as well as the reasons given by the learned trial Court, it cannot be said that the learned trial Court has committed any error in dismissing the application below Exh. 265 refusing to recall the witnesses for further cross-examination, which calls for interference of

this Court in exercise of powers under Article 227 of the Constitution of India. There is no jurisdictional error much less than law committed by the learned trial Court in rejecting the said application.

7. For the reasons stated above, the application fails, requires to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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